

RETAIL ENERGY SUPPLY ASSOCIATION

REPLY COMMENTS IN 14-NOI-01

I. INTRODUCTION

On September 30, 2014, the Illinois Commerce Commission (“Commission”) entered an order, initiating a Notice of Inquiry (“NOI”) proceeding, 14-NOI-01, regarding retail electric market issues. In its NOI Order, the Commission requested comments on numerous questions related to various topics. On November 6, 2014, the Retail Energy Supply Association (“RESA”)¹ submitted Initial Comments in this NOI proceeding. Initial Comments were also submitted by a number of other parties.

In these Reply Comments, RESA will address the following issues. First, RESA disagrees with Ameren Illinois Company (“Ameren”) and Commonwealth Edison Company (“ComEd”) that they should not be required to place the logos of Retail Electric Suppliers (“RES”) on their bills. Second, RESA disagrees with the Initial Comments of Ms. Janice Thompson regarding renewable energy matters. Third, RESA disagrees with the Initial Comments of the Illinois Competitive Energy Association (“ICEA”) regarding its proposal for Product Definitions as well as its proposal directed at RESs that have a single star rating on the Commission’s RES

¹ RESA’s members include AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. d/b/a IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Complaint Scorecard. Fourth, RESA disagrees with certain of the positions taken by the Citizens Utility Board (“CUB”).

II. RESPONSE TO AMEREN AND COMED

Ameren Illinois Company d/b/a Ameren Illinois (“Ameren”) implies that utilities should not be required to display the RES’ logo on a utility-consolidated bill (“UCB”) after taking into account the information already being provided on the bill. (Ameren In. Comments, pp. 4-5). Additionally, if the Commission were to adopt this practice, Ameren “recommends that the Commission give the utility total authority regarding the display of logos.” *Id.* Also, Ameren opines that it “reserves the right to seek recovery of costs” and “recommends that if the Commission adopts the logo practice, that it should apply to both utilities [Ameren and ComEd] and RESs” who participate in the Single Bill Option. *Id.*, p. 5. Similarly, Commonwealth Edison Company (“ComEd”) raises three (3) concerns it identifies as: 1) practical implementation issues and obstacles; 2) cost recovery considerations; and 3) legal issues, or specifically that “no requirement exists in Illinois statutes or rules that a utility must reflect a RES’s logo on the utility’s bills” (ComEd In. Comments, pp. 1-5)

Ameren opines that, “[i]t is not necessary to modify the rules governing utility-consolidated bills to include supplier logos.” (Ameren In. Comments, p. 4). ComEd seems to agree with Ameren that the Commission currently does have the authority and may require for UCB’s to include supplier logos, but does not have an obligation to require it. In support of its contention ComEd states that “no requirement exists in Illinois statutes or rules that a utility must reflect a RESs logo on the utility’s bills.” (ComEd In. Comments, p. 3).

RESA, however, believes the benefits of having supplier logos on utility bills justifies the implementation and timing concerns and added costs discussed by Ameren and ComEd in their respective Initial Comments. Putting the logo on utility bills would help eliminate confusion on the part of RES customers, especially customers of opt-out municipal aggregations who may not even be aware that they were switched to a competitive supplier. The supplier's logo may in fact be the most prominent and frequent reminder that they are on competitive supply.

In Ohio, once the order of the Public Utilities Commission has been fully implemented, the supplier logo will be placed next to the supplier charges in the same size as the utility logo. Also, if the utility's logo is in color then the supplier's logo must be in color. The Ohio Commission made this decision in the Ohio Retail Market Investigation, accepting the recommendation of its Staff:

The Commission finds that Staff's recommendation should be adopted. If a customer is shopping, then the CRES provider's logo or name must be displayed on the customer's bill next to the EDU's logo or in the area containing the supply charges of the bill. If the EDU's logo is displayed in color, the CRES provider's log or name should also be displayed in color. **The Commission believes that adopting Staff's proposal will bring clarity and uniformity to customer bills, as well as promote further development of Ohio CRES [Competitive Retail Electric Service] markets.** (Order in Docket 12-3151-EL-COI, p. 29, emphasis added)

Note also that the Ohio Commission deferred collection of the costs of bill formatting changes to the electric utilities' next distribution rate cases. (*Id.*, p. 26)

III. RESPONSE TO MS. JANICE THOMSON

In its Initial Comments, RESA, in addressing the issue of "renewable" or "green" energy offers noted that "green" is a broad marketing terms and that defining that term may put the Commission in the inappropriate position of setting environmental policy. RESA also noted that the Federal Trade Commission has already issued guidelines for "green" marketing and that

there is a definition of “renewable energy resources” in the Illinois Power Agency Act (“IPA Act”). On the subject of whether the Commission should add a “% renewable” column to the PlugInIllinois.org website, RESA responded that it would not object to including this information if the Commission believes it adds value and there is not an undue cost to update the website.

Ms. Thomson’s Initial Comments, which were limited to the subject of “renewable” or “green” energy, reflect an opinion that “renewable energy credits” or “RECS”, which are defined in the IPA Act as a “renewable energy resource”, are not really renewable energy resources. For example, Ms. Thompson makes reference to “cheap RECs from voluntary national markets” (Ms. Thomson’s In. Comments, p. 1) and “inexpensive RECs on the market from states like Texas” (*Id.*, p. 2)

RESA disagrees with Ms. Thomson’s notion that a REC is an inferior form of renewable energy resource. In fact, RESA’s position was confirmed in the Commission’s Order in Ill. C. C. Docket 10-0563, in which some parties had argued that RECs were inferior to other forms of renewable energy resources and that the Illinois Power Agency’s plan to procure RECs should be rejected and the IPA directed to enter into long-term purchase power agreements for renewable energy resource. The Commission rejected these arguments, found that RECs are renewable energy resources within the meaning of the IPA Act, and approved the IPA’s decision to procure one-year RECs to meet the renewable energy portfolio requirements of the electric utilities. (Order in Docket 10-0563, dated December 21, 2010, p. 83)

IV. RESPONSE TO ICEA

RESA is in general agreement with many positions taken by ICEA in its Initial Comments. However, RESA feels compelled to respond to two (2) of the positions taken by ICEA. First, RESA believes that ICEA's "recommended product definitions" are based on laudable intentions regarding consumer protection and avoiding customer confusion. ICEA provided recommended product definitions" for: 1) Fixed Price Product; 2) Variable Non-Index Product; 3) Index Product; and Time of Use Products. (ICEA In. Comments pp. 5-9) While ICEA "recognizes the value of agreed-upon industry standard definitions," the definitions provided by ICEA are generally not industry standard definitions and do not appear to be offered with stakeholder input.² Additionally, as RESA stated in its Initial Comments:

RESA believes the terms "fixed" and "variable" are clear. If the Commission believes there is a need to define the terms, it should include the definitions on its PlugInIllinois website. In fact, the Commission developed the following natural gas definitions for "Fixed Price" and "Variable Price" that can be viewed on the Commission's website:

Fixed price: Under this plan you pay the same price per therm for natural gas each month, but the bill will vary based on the amount of gas used.

Variable price: The price per therm may go up or down with market trends. But this type of offer may or may not be tied to a market index. For example, it may be based on the supplier's average cost to purchase natural gas. Consumers should look to specific offers for the terms of variability.

<http://www.icc.illinois.gov/ags/glossary.aspx>

Furthermore, these definitions were developed in collaboration through a Staff led workshop process that included stakeholder input from the AG, CUB, Staff and AGS.

(RESA In. Comments, pp., 9-10)

² CUB offered its recommended definition of "'fixed' – a price that is the same each month of the contract term." and "'variable' – a price that changes each month." (CUB In. Comments, p. 6)

Accordingly, if the Commission believes that electric price definitions should be developed for posting on the ORMD website, these should be developed in a workshop process. RESA would be an active participant along with other interested stakeholders in such a workshop process.

Next, ICEA opines that RESs having a one-star rating in the Commission's RES Complaint Scorecard be targeted for some form of action by the Commission Staff:

ICEA proposes that the Commission--through the ORMD and Consumer Services Division ("CSD")—identify any RES that has a consumer complaint rating of one star for a period of 6 consecutive months or more and initiate a remediation action plan that is designed to improve upon that RES's 1-Star customer complaint rating. The vehicle for a remedial action could be accomplished through Commission Staff workshops for 1-Star RESs, individual meetings with such rated RESs, or a Commission ordered 10-101 investigation. (ICEA Initial Comments, p. 31)

RESA disagrees with ICEA's proposal for the following reasons:

- The Commission's website itself acknowledges that the score card is only one (1) measure of a RES' customer service and recommends consideration of other measures such as ratings from the Better Business Bureau.
- The score card is skewed in favor of RESs who do a large amount of municipal aggregation in that the government has selected the RES, not the customer.
- ICEA's proposal would lead to a never-ending process for the Commission Staff because by improving a RES' one-star rating to, for example, a two-star rating another RES, a two star RES, would move into the one-star rating category, thereby requiring some sort of intervention by the Commission Staff.
- The complaint scorecard does not distinguish between complaints that prove to be justified and complaints that do not prove to be justified. In fact, a call recorded as a complaint may simply be more in the nature of an inquiry.

V. RESPONSE TO CUB

Before responding to the specific positions contained in CUB's Initial Comments, RESA would like to make three general comments relating to those positions.

A. The Commission should utilize the authority it has under the Public Utilities Act and its existing rules before considering the adoption of additional rules.

The Public Utilities Act provides substantial authority to the Commission to regulate important aspects of the operations of ARES (see, for example, 83 Ill. Admin. Code Part 451, Certification of Alternative Retail Electric Suppliers, and 83 Ill. Admin. Code Part 412, Obligations of Retail Electric Suppliers. Consequently, while RESA is not opposed to adopting additional rules or revising existing rules if the result will be beneficial to customers, the Commission should closely examine the actions it can take under its existing rules. For example, if an ARES were violating the Commission's existing rules, such as rules relating to marketing its products, the Commission should enforce those existing rules against that ARES before considering whether to impose more stringent rules on all ARES.

B. This Investigation Should not be Viewed as an Opportunity to Micromanage ARES' Operations.

The Commission's authority over ARES is more limited than its authority over public utilities, including electric public utilities. The Commission should be careful not to attempt to over-regulate or micromanage ARES. The results of any attempt at such over-regulation would be to limit the number of electric suppliers willing to operate as ARES in the state of Illinois and to limit the products that ARES are willing to offer to customers. ARES must be responsive to customer preference and expectations. The pressures brought to bear by consumer behavior on ARES activities provide the basis for a more efficacious manner in which to promote consumer wellbeing.

C. ARES Products Should not be Disadvantaged Over the Default Generation Supply Price as a Result of Newly Enacted Rules

If the Commission is considering new consumer protection rules, the Commission should be mindful on the effect that those rules will have on the development of the competitive retail electric market. RESA is not opposed to reasonable consumer protections, *but all products should be treated equal in the market*. However, many of the consumer protections proposed by other parties in this proceeding would unnecessarily increase operating costs on RESs, and otherwise restrict RESs from offering products in the market, without placing the same requirements on default supply service from the utilities.

Specifically, in this proceeding, a number of parties have proposed restrictions on RES ability to offer variable pricing, and enhanced disclosure requirements on variable pricing. RESA will address each specific proposal below, but generally speaking, if the Commission believes these requirements are necessary to protect customers, *the same requirements should be imposed on default supply as well*. For example, if the Commission determines all customers should be mailed a notice of a change in a variable price, the same notice(s) should be required when the default supply price changes. To do otherwise will have anti-competitive effects and stifle the development of innovative products and services offered in the market.

Variable Rate Offers

1. What type of disclosure requirements do you believe are necessary for variable rate offers to ensure consumers understand that the rate fluctuates?

CUB argues that variable rate offers should be required to include a “band” within which their supply will be for the length of the contract.

CUB also argues that the IPA price per kWh should be displayed on all bills as the price to compare.

CUB also argues that “all historic depictions of utility prices shall display at least three years of data in no greater than quarterly increments and shall also display the RES’s offered price for the same or equivalent product[s] or service[s] for each of the same increments.

RESA Response

CUB’s first argument actually does not go to disclosure, but to setting a “band” or minimum/maximum range, or collar on pricing. CUB’s proposal is a form of price regulation outside of the ICC’s authority and is more fully addressed below in response to question 5 in this section.

RESA disagrees with CUB’s second argument in that RESA does not agree that the IPA price per kWh should be considered the Price-to-Compare, as was explained in RESA’s Initial Comments in response to the first question in the “Price-To-Compare” section.

CUB’s argument for three years historical data is not appropriate. As last winter demonstrated, historical prices are not a good predictor of current or future prices.

2. Should the Commission adopt a requirement that the supplier provide the customer with a formula or method by which the variable rate is determined?

CUB replies that the Commission should adopt such a requirement, citing last year’s experience regarding extremes of upward price swings on variable rates.

RESA response

There are a number of problems with CUB’s position.

First, many times the formulas used to set variable prices are proprietary in nature. Even if they weren’t they can be extremely technical and would be of little value to the average customer. As RESA stated in its Initial Comments, Commonwealth Edison Company’s (“ComEd”) supply charges are variable month-to-month.³ Rider PE, Purchased Energy, is set forth on 21 pages of ComEd’s Schedule of Rates

Second, Subsection 412.110 (d) of the Commission’s rules already requires that the sales contract shall include the “charges for the service for the length of the contract and, if any charges, are variable during the term of the contract, an explanation of how the variable charges are determined”. Moreover, Section 412.120 requires this information to be disclosed during a door-to-door sale and that the customer initial the sales person’s copy

³ Arguably, the PTC including the PEA is a minimum/maximum, or collar price that can vary plus or minus up to 0.5 cents/kWh each month.

of the disclosure. Also, Section 2EE of the Consumer Fraud and Deceptive Business Practices Act requires that a customer in order to switch electricity suppliers must acknowledge the terms and conditions and this must be verified using either third party verification or a letter of agency that covers the terms and conditions, including the price to be charged.

Third, CUB is essentially asking to add much more information to a document that has a two-page limit and that some customers already find difficult to read.

The Commission may want to consider providing guidelines as to what constitutes an adequate explanation of how variable charges are determined. Any such guideline should be a reasonable accommodation of providing an adequate explanation while being understandable to the average consumer.

3. Should the Commission adopt a requirement that a residential variable rate has to be tied to a publicly available index/benchmark?

CUB argues that the Commission should adopt such a requirement.

RESA Response

RESA disagrees with CUB. First, such a requirement goes beyond a disclosure requirement and is effectively regulating the rates of ARES, which goes beyond the authority of the Commission. Second, such a requirement could also lead to customer confusion as the average customer does not understand the wholesale electric market and there is more to the retail supply price than just the wholesale cost of the commodity. Third, CUB's argument is based on the faulty premise that a RES would want to charge its customer a punitive price. Fourth, CUB is effectively arguing that the Commission only permit index products to be offered by RESs, a power that the Commission does not possess.

4. Should the Commission adopt additional notice requirements for variable rate changes?

CUB argues that the RES should be required to notify its customers of the rate for their following month's supply either on each monthly bill or in a print or electronic communication, prior to the month the charges will begin to be incurred under the new rate.

RESA Response

CUB's argument seems to demonstrate a lack of understanding about the market and how variable prices are set. Most variable prices are set a day or two before the month in

which the rate is active. CUB's proposed requirement would make RESs guess at what the price would be further into the future, thereby adding risk. Anytime you add risk, you add costs. Moreover, this argument seems to be contrary to CUB's position that a variable rate be tied to an index. Finally, the default supply price is a variable rate, and no such notices are required when the default supply price changes.

5. Should the Commission require suppliers to set and disclose a maximum rate for each residential variable rate offer?

CUB argues that Commission should adopt such a requirement and that the maximum rate should be the upper limit of the band CUB recommended in response to the second question in this section.

RESA Response

Such a requirement goes beyond a disclosure requirement and is effectively regulating the rates of ARES, which goes beyond the authority of the Commission. Moreover, it is impossible to predict what the maximum rate for electricity is going to be. If customers want price certainty, they can get that by enrolling in a fixed rate product. The theory behind a variable rate product is that the customer takes the risk of price spikes for getting the benefit of market reductions. For example, customers taking service from ComEd's Residential Real Time Pricing (RRTP) program, a Time of Use product, take on the risk of price spikes as "prices are based on the market prices for the ComEd Zone in PJM. (See <https://rrtp.comed.com/faqs/>)" Finally, there is no band or maximum price set for the default service price and it would be inequitable to set such a band for RESs products.

6. Should sales of variable rate offers be prohibited from implying future savings unless the basis for such implied savings is provided?

In its response to this question, CUB raises the issue of door-to-door marketing.

RESA Response

Section 412.120 already has adequate protection for door-to-door sales, requiring the agent to go over the provisions of Section 412.110 and requiring the customer to initial an acknowledgement of that disclosure. Further, the Consumer Fraud and Deceptive Business Practices Act, referred to by CUB, requires that the sale be verified either by the customer signing a Letter of Agency or performing a TPV. Many suppliers do both.

7. Should the Commission require suppliers to provide its customers with readily available access to rates, including historical rates and current rates, as well as imminent changes to the rates?

CUB supports such a requirement arguing that historical information will give the customer “some idea of what the future may look like”. CUB also requests that RES have customer service personnel available 24 hours a day/seven days a week to respond to requests for rate information.

RESA Response

RESA disagrees. Historical and current rates are not necessarily indicative of future rates; there was no better illustration of this than the 2013-2014 Winter in the Northeast where the Polar Vortex resulted in electricity rates that far exceeded both recent and historical rates.

With respect to requiring RESs to have customer service representatives available 24 hours a day seven days a week, such a requirement would add unnecessary costs to all RESs with no benefit.

Renewable or “Green” Energy Offers

- 1. Should the Commission define residential marketing terms such as “green” and “renewable” offers? If so, what should form the basis of such definitions?**
- 2. Should a “% renewable” column be added to the supplier offer matrix found on PlugInIllinois.org? If so, is the addition of such a column dependent on a Commission definition of “renewable energy”?**

CUB, while acknowledging that a REC is a renewable energy resource according to the definition of “renewable energy resources” from the IPA Act, which is the definition that CUB recommends that the Commission adopt, wants to create a separate column in the supplier offer matrix to distinguish between what percentage of the “supplier’s ‘renewable energy offer’ is renewable energy and what % is comprised of RECs.

RESA Response

RESA disagrees with CUB’s recommendation. Electrons are not color-coded. While a RES may be delivering a specific percentage of renewable load to ComEd for distribution, the RES cannot guarantee that the electric utility delivered that specific load to the RES’ customer. It would be misleading a customer for the RES to publish that 50% of his or her electricity came from renewable resources when the actual electricity delivered from electric utility to that customer may be 100% coal and the renewable energy went to another customer.

Defining Fixed and Variable Rates

- 1. Should the Commission define “fixed” and “variable” rates? If so, how should such definitions impact the supplier offer matrix on PlugInIllinois.org?**

In addition to supporting definitions of “fixed” and “variable” rates, CUB proposes to add an additional column to the supplier matrix and three sub-columns to show costs assuming usage levels of 500 kWh, 1000 kWh, and 1500 kWh.

RESA Response

As stated in our Initial Comments, RESA believes the terms “fixed” and “variable” are clear. However, if the Commission believes there is a need to define the terms, RESA referenced the natural gas definitions for “Fixed Price” and “Variable Price” that can be viewed on the Commission’s website. Regarding usage levels, such information is not necessary unless the rates vary with usage. For example, no useful information would be provided by stating that 500 kWh would cost \$50, 1000 kWh would cost \$100, and 1500 kWh would cost \$150.

Price-To-Compare

- 1. Should the Commission specify how a supplier has to portray the utility Price-to-Compare?**

CUB’s position is that RESs should be required to portray the utility Price-to-Compare, inclusive of supply charges with the exception of the Purchased Energy Adjustment (“PEA”)

RESA Response

As indicated in our Initial Comments, RESA has concerns about calling the utility price the “Price-to-Compare” in that it gives the implicit endorsement that the utility default supply price is the preferred product in the market. If the Commission wishes to provide a “Price-to-Compare” for customers it should consider finding other means to establish a comparison price such as the average price of all products in the market.

- 2. Should the Commission require a uniform method of price comparison based on usage intervals?**

CUB’s position is that the Commission should adopt such a requirement.

RESA Response

It would be impractical to provide a uniform method of price comparisons based on usage intervals because it requires too many assumptions about a product. For instance, if a RES offers a product that gives a customer a credit for reducing energy consumption during peak demand, it would be impossible to include that into a per KWH price. Further, it would be impossible to put time of use prices into a per KWH price, because the per KWH price would depend on the time of day the customer uses electricity. Further, such pricing requirements will encourage only the lowest common denominator product offerings and be punitive to products that offer additional value to customers beyond the commodity.

Consumer Education

6. Should suppliers be required to post their residential offers on PlugInIllinois.org?

CUB supports such a requirement.

RESA Response

For the reasons stated in our Initial Comments, RESA opposes such a requirement, as it would ultimately diminish the value of the PlugInIllinois website by making it unwieldy.

Cancellation/Rescission

1. Should a customer be entitled to the previous rate if she cancels the contract within a set number of days of being notified of the new rate?

CUB argues that the customer should be entitled, especially if the customer was not provided notice, as required by Part 412, of the new rate.

RESA Response

RESA disagrees. As stated in our Initial Comments, the Commission does not have the right to change the terms of a contract between a RES and its customer.

VI. CONCLUSION

RESA appreciates the opportunity to submit these Reply Comments. RESA requests that the Commission consider these Reply Comments in analyzing the issues addressed herein. , RESA intends to remain active in this NOI proceeding and in any proceeding that is established as a result of this NOI proceeding and provide thought-leadership on the issues wherever possible.

Respectfully submitted,

s/s GERARD T. FOX

Gerard T. Fox

An Attorney for the Retail Energy Supply Association

Law Offices of Gerard T. Fox
203 N. LaSalle Street
Suite 2100
Chicago, IL 60601
(312) 827-7986
gerardtfox@gerardtfoxlawoffices.com